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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/800,519      | 03/15/2004  | Mark E. Kershaw      | 075254.0102         | 9478             |

7590

06/13/2005

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EXAMINER

JOHNSON, STEPHEN

ART UNIT

PAPER NUMBER

3641

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/800,519

Applicant(s)

KERSHAW, MARK E.

Examiner

Stephen M. Johnson

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 28-47 is/are pending in the application.
- 4a) Of the above claim(s) 30-36, 38, 39 and 44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28, 29, 37, 40-43 and 45-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 28-47 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/15/2004.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

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1. Applicant's election with traverse of the species (1) configurations of figs. 1, 2; (2) armor material type of polyethylene; and (3) method of construction including injection moulding as an integral construction in the reply filed on 5/12/2005 is acknowledged. The traversal is on the ground(s) that independent claim 28 is allowable. This is not found persuasive because claim 28 has been rejected on applied art (see below).

The requirement is still deemed proper and is therefore made FINAL.

Claims 28-29, 37, 40-43, and 45-47 read on the elected species and an action on these claims follows. Claims 30-36, 38-39, and 44 are withdrawn from consideration as being directed to non-elected species.

2. Claims 28-29, 37, 40-43, and 45-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 28, lines 4-5, claims "the skin and honeycomb lining are formed of a material that is non-deformable". This statement is inconsistent with both the further claim language and the nature of the skin and lining material. For instance, claim 28, lines 5-8, claims "the skin and honeycomb lining are formed integrally with each other and the thickness of the skin is non-uniform over the surface of the protective body to form at least one fold line ... to enable the protective body armour to conform to the contour of the person's body". The skin and lining material cannot be described as having a fold line to permit folding of the device to conform to the shape of a person's body and also claim that the material is non-deformable. Further, claim 37 claims the body armour material to be formed of polyethylene. Polyethylene is a material that is inherently deformable and is in fact deformed via the fold-lines of reduced body thickness.

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 28-29, 40-43, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Pratt.

Pratt discloses a protective body armour comprising:

- |                                                     |                                                                                         |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------|
| a) a skin and honeycomb lining;                     | 12, 34, col. 2, lines 51-57                                                             |
| b) bounding inner walls;                            | 34                                                                                      |
| c) a cup-shaped lining;                             | 12 (see fig. 4)                                                                         |
| d) a non-uniform thickness to form a fold line; and | (see fig. 4) portion adjacent<br>lead line for 26 that is a cut<br>of reduced thickness |
| e) elliptical shape.                                | see figs. 1, 2                                                                          |

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 37 and 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pratt in view of Ward et al..

Pratt applies as previously recited. However, undisclosed is an armor material that is a

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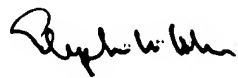
translucent polyethylene material. Ward et al. teach an armor material that is a translucent polyethylene material (col. 5, lines 39-46). Applicant is substituting one resilient material for another as explicitly encouraged by both the primary reference (see col. 2, lines 59-62 of Pratt) and the secondary reference (see abstract of Ward et al.) in an analogous art setting. It would have been obvious to a person of ordinary skill in this art at the time of the invention to apply the teachings of Ward et al. to the Pratt body armor and have a body armor of a translucent polyethylene material.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Siman-Tov et al., Tomczak, Volker et al., Dunn, and Chang disclose other state of the art armor constructions.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 571-272-6877. The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 800-786-9199.

  
**STEPHEN M. JOHNSON**  
**PRIMARY EXAMINER**

Stephen M. Johnson  
Primary Examiner  
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SMJ

June 9, 2005